UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **THOMAS R MOORE**, Debtor.	Case No. **05-64359-13**

MEMORANDUM of DECISION

At Butte in said District this 25th day of January, 2006.

In this Chapter 13 bankruptcy, after due notice, a hearing was held January 10, 2006, in Butte on the "Trustee's Objection to Property Claimed as Exempt" filed November 22, 2005, together with Debtor's response thereto filed November 29, 2005. The Chapter 13 Trustee, Robert G. Drummond, appeared at the hearing in support of his Objection and Debtor appeared both personally, and through his attorney, Harold V. Dye, in opposition to the Trustee's Objection. Debtor testified. No exhibits were offered into evidence. This Memorandum of Decision sets forth the Court's findings of fact and conclusions of law.

BACKGROUND

The Trustee objects to Debtor's claimed exemption of $100,000 in 20 acres in Granite County, Montana. The Trustee asserts is his Objection that:

> Debtor does not live on the property. There are no structures on the property and the property is not habitable. The Debtor has never lived on the property. The Debtor lives on an adjacent property which is owned by his wife.

Debtor's response to the Trustee's above argument, as set forth in Debtor's response filed November 29, 2005, was:

> The property in question is contiguous to and a part of debtor's homestead. Both parcels are being purchased from the same party on contracts for deed which were entered into at separate times. It was only through happenstance that the portion of the homestead on which the residence was constructed was on a parcel only in debtor's spouse's name.

In addition to the above facts, Debtor testified that he and his spouse jointly purchased the 20 acres at issue in 1999. There are no improvements or dwellings on the 20 acre parcel. Additionally, a building site has not been cleared on the 20 acre parcel and the property does not have a well or septic system. About 6 months after Debtor and his spouse purchased the 20 acre parcel, Debtor's spouse purchased a 30 acre parcel of real property, which parcel is contiguous to the 20 acre parcel. Debtor and his spouse currently reside in a one bedroom cabin on the 30 acre parcel of property but eventually intend to build a home on the 20 acre parcel.

Debtor explained that his spouse was in an automobile accident in April of 2001 and is now handicapped. As such, the couple have not yet been able to build a home on the 20 acre parcel of property.

APPLICABLE LAW

The sole issue before the Court is whether a debtor may establish a valid homestead exemption in property that is not currently occupied by the debtor and has never been occupied by the debtor, but which property is contiguous to the debtor's home. The commencement of a case, whether voluntary, joint or involuntary, under any of the Chapters in Title 11 of the United States Code, creates an estate which consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). In the context of Chapter 7 bankruptcies, once property is deemed an asset of the estate, it remains as such and may be administered by the Trustee for the benefit of the creditors unless the debtor is entitled to remove,

and in fact affirmatively does remove, either a portion of the asset, or the entire asset, from the bankruptcy estate through the exemption process. *In re Binns*, 9 Mont. B.R. 386, 387 (Bankr. D. Mont. 1991); 11 U.S.C. § 522(l). In the context of Chapter 13 bankruptcies, the allowance or disallowance of an exemption can effect the amount a debtor must contribute to his or her Chapter 13 plan. As explained by a leading treatise on bankruptcy:

> A fundamental component of an individual debtor's fresh start in bankruptcy is the debtor's ability to set aside certain property as exempt from the claims of creditors. Exemptions of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.

4 COLLIER ON BANKRUPTCY, ¶ 522.01, p.522-15 (15th ed. rev.).

The allowable exemptions under the Bankruptcy Code are set forth at 11 U.S.C. § 522. However, Montana has opted out of the federal exemption scheme by means of Mont. Code Ann. § 31-2-106,[1] which applies the Montana homestead exemption statutes set forth in Chapter 32 of Title 70, Mont. Code Ann. Thus, this Court must look to state law, rather than federal law, to determine the extent of Debtor's allowable homestead exemption. *In re Loeb*, 12 Mont. B.R. 524, 527 (Bankr. D. Mont. 1993).

Section 101 of Chapter 32, Title 70, Mont. Code Ann., provides that a "homestead consists of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated, selected as provided in this chapter." By way of limitation, § 104 provides that a "homestead may not exceed $100,000 in value."

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[1] Mont. Code Ann. § 31-2-106 reads:

> An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in11 U.S.C. § 522(d).

Mont. Code Ann. § 70-32-104.

As the Court embarks upon resolution of the issue at hand, the Court is mindful that Montana's Constitution and case law require that the homestead exemption be liberally construed in favor of the claimant. Constitution of the State of Montana, Article XIII, section 5; *Neel v. First Fed. Sav. and Loan Assoc. of Great Falls*, 207 Mont. 376, 383, 675 P.2d 96, 100 (Mont. 1984) (Recognizing the maxim that homestead laws should "be liberally construed in favor of the homestead claimant"). *See also Glass v. Hitt (In re Glass)*, 60 F.3d 565, 570 (9th Cir. 1995) ("the availability of exemptions is to be liberally construed in favor of the debtor").

In the case of *Oregon Mortgage Co., Ltd. v. Dunbar*, 87 Mont. 603, 289 P. 559 (1930), the defendant owned two parcels of land, one consisting of 110 acres and the other of 40 acres. The two parcels cornered with each other and a house and outbuildings were located on each parcel of property. The defendant sometimes lived in one house and sometimes in the other. The defendant would rent the house in which he was not residing. The entire 150 acres was occupied and worked as a single unit for agricultural purposes. The defendant filed a declaration of homestead which covered both parcels of property.

At the time the Supreme Court of Montana rendered it decision in *Dunbar*, Montana's homestead laws provided as follows:

> The homestead consists of the dwelling-house in which the claimant resides, and the land on which the same is situated, selected as in this chapter provided." Section 6968 provides: "Homesteads may be selected and claimed: 1. Consisting of any quantity of land not exceeding one hundred and sixty acres used for agricultural purposes, and the dwelling-house thereon and its appurtenances, and not included in any town plot, city, or village. * * * Such homestead * * * shall not exceed in value the sum of two thousand five hundred dollars.

Dunbar, 289 P. at 559-60. Based upon the facts and Montana law, as it then existed, the

Supreme Court of Montana upheld the validity of the defendant's homestead exemption reasoning that the two parcels were contiguous, did not exceed 160 acres in area or $2,500 in value, and were utilized as one farm by the defendant for agricultural purposes.

As in *Dunbar*, it does not appear that Montana's current homestead laws prohibit a debtor from claiming a homestead exemption in multiple parcels of property, provided the claimed exemption does not exceed the statutory limitations and provided the allowance of the exemption furthers the purpose of the homestead laws. Additionally, current law does not limit the area to which the homestead exemption may apply as prior law did. Today, the sole requirements are that the homestead "consist of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated" and that the value of the homestead not exceed $100,000.

DISCUSSION

The Trustee apparently argues that the 20 acre parcel of land owned by Debtor and his spouse does not fit within the statutory definition of what constitutes a homestead. Debtor's opposition to the Trustee's Objection is apparently premised on the theory that claimants are not prohibited under Montana law from claiming a homestead exemption in multiple parcels of property, provided the parcels are contiguous.

The Trustee does not contend that the homestead exemption claimed by Debtor exceeds $100,000. Thus the sole issue is whether Debtor's claimed exemption consists of something more than Debtor's dwelling house, all appurtenances and the land on which the same are situated. To resolve such issue, the Court finds the following passage instructive:

Fundamental to the issue is to keep in mind that the purpose of the homestead

> exemption is to preserve for the claimant a home and those adjacent appurtenances essential to its continued enjoyment. This concept should not be understood in terms of acreage or boundaries but rather in terms of how the adjacent land is used and how it contributes to, or preserves the enjoyment of the home.

In re Schriock, 192 B.R. 514, 515 (Bankr. N.D. 1995). Indeed, the above noted purpose is embodied in the Montana Supreme Court's *Dunbar* decision wherein the court cited approvingly to *Brixius v. Reimringer*, 101 Minn. 347, 112 N.W. 273 (Minn. 1907). In both *Dunbar* and *Brixius*, the courts emphasized the fact that the multiple parcels claimed as exempt under the homestead laws of the respective states were used and cultivated as a single unit.

Following the above, this Court agrees that a debtor may be entitled to claim a homestead exemption on multiple parcels of property if the debtor adequately demonstrates that the parcels are appurtenant to the dwelling and in fact are utilized by the debtor indiscriminately for the purpose of maintaining the homestead. *See Schriock*, 192 B.R. at 515-16. In *Schriock*, the bankruptcy court denied the debtor's claimed homestead exemption because there was no apparent relationship or interdependency between the multiple parcels. *Id.* at 516. The court reasoned that "where tracts are truly contiguous unless the second tract is used in connection with the tract on which the dwelling is located, the second is not part of the homestead." *Id*. at 515-16.

The relatively few facts in the instant case do not show an "apparent relationship or interdependency" between the 20 acre parcel and the 30 acre parcel. Rather, the facts reflect that Debtor and his spouse purchased the two parcels of property at separate times. Based upon the foregoing, the Court finds that Debtor's home and the adjacent appurtenances essential to Debtor's continued enjoyment of his home are all located on the 30 acre parcel of land. No

showing has been made that the 20 acre parcel is necessary for Debtor's continued enjoyment of his current home. Thus, the Trustee's Objection must be sustained.

The Court's above ruling comports with one of the fundamental purposes of the Bankruptcy Code in that it provides debtors a fresh start by allowing debtors to protect the equity in their home from execution or forced sale. However, the Court's ruling also strikes a balance in that it does not allow debtors to reap a windfall at the expense of debtors' creditors.

The Court's ruling in this case is somewhat frustrated by the fact that neither party saw fit to offer the declaration of homestead into evidence. However, as set forth in *In re Schmitz*, 16 Mont. B.R. 512, 515 (Bankr. D. Mont. 1998), "any doubt created by the absence from the record of the homestead declaration must be borne by the Trustee, the objecting party, because he has the burden of proof under F.R.B.P. 4003(c), and in accordance with the policy that exemptions are to be liberally construed in favor of debtors. *Glass v. Hitt (In re Glass)*, 60 F.3d 565, 570 (9th Cir. 1995)."

Nevertheless, the record before the Court does not show whether Debtor has in fact filed a valid declaration of homestead on either the 20 acre parcel or property or the 30 acre parcel.[2] Mont. Code Ann. § 70-32-106 provides that a "declaration of homestead must contain a statement that the person making it *is residing* on the premises and claims them as a homestead and a description of the premises". The foregoing illustrates the general rule, in Montana, that an individual asserting a homestead exemption must reside on the premises. Debtor admittedly does not reside on the 20 acre parcel and as noted above, there has been no showing that the 20 acre

[2] Mont. Code Ann. § 70-32-103 provides: "If the claimant be married, the homestead may be selected from the property of either spouse."

parcel is essential to Debtor's continued enjoyment of his home located on the 30 acre parcel. Consistent with the foregoing, the Court will enter a separate order providing as follows:

IT IS ORDERED that the "Trustee's Objection to Property Claimed as Exempt" filed November 22, 2005, is SUSTAINED; and Debtor's claimed homestead exemption in a 20 acre parcel of property located in Granite County, Montana is DENIED.

BY THE COURT

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana